Supreme Court, U. S.
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NO. .....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CLINTON MANGES AND DUVAL COUNTY RANCH COMPANY,

Petitioners,

V.

COUNTY OF DUVAL, ET AL,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF TEXAS

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To The Honorable Supreme Court of the United States:

Come now *Clinton Manges* and *Duval County Ranch Company*, as petitioners, and respectfully petition the Court for writ of certiorari to review the opinion and judgment of the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas adjudicating petitioners liable for delinquent state *ad valorem* taxes. In support of their petition, petitioners would show the Court as follows:

THE QUESTIONS PRESENTED FOR REVIEW

1.

Whether the petitioners were denied due process of law as guaranteed by the 5th and 14th Amendments to the Constitution of the United States by the lower court's interpretation and application of Arts. 7326 and 7336, *Tex. Rev. Civ. Stat., 1925,* so as to create a "presumption" that the various respondent taxing authorities had accomplished the legislative act of levying the taxes sought to be collected.

2.

Whether or not it is a fundamental denial of the due process guaranteed by the 5th and 14th Amendments to the Constitution of the United States for a state court to interpret and apply a state statute, which makes delinquent tax rolls *prima facie* evidence of the regularity of levying, listing, and assessing taxes, as a "presumption" that taxing authorities have acted to levy a tax, when such levy cannot otherwise be proved through official records and the trial court finds that the evidence does not establish the existence of a levy.

LIST OF PARTIES

The following are parties to the action:

a. Duval County Ranch Company, a corporation.
b. Clinton Manges, a private individual.
c. The State of Texas.
d. Duval County, Texas.
e. Duval County Vocational School District.

f. Duval County Conservation and Reclamation District.

g. Benavides Independent School District.

h. Freer Independent School District.

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REFERENCE TO OFFICIAL REPORTS

The opinion of the Texas intermediate appellate court whose judgment is sought to be reviewed is affirmatively reported as *Duval County Ranch Co., et al* v. *State, et al*, 587 S.W.2d 436 (Tex. Civ. App., 1979, writ ref., n.r.e.). A copy of the opinion is found in Appendix A.

GROUNDS OF JURISDICTION

The jurisdictional bases upon which this petition is founded are:

a. The opinion and judgment of the court of civil appeals are dated July 11, 1979. A timely-filed motion for rehearing in that court was overruled September 5, 1979. (See 587 S.W.2d 436.)

b. Application to review the judgment of the court of civil appeals was denied by the Supreme Court of Texas on January 16, 1980. (See Appendix C.) A motion that the Supreme Court of Texas rehear its order denying application for writ of error was overruled June 25, 1980. (See Appendix C.)

c. Under *28 U.S.C., § 2101(c)*, the 90 day period for filing petition for certiorari commenced June 25, 1980, and the petition is due to be filed on or before September 23, 1980.

d. Jurisdiction of the court is invoked under *28 U.S.C., §1257(3)*, in that petitioners are claiming violation of rights of due process guaranteed by the 5th and 14th Amendments to the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are:

a. the 5th and 14th Amendments to the Constitution of the United States, the terms of which, we believe,

are so familiar to the Court they need not be reproduced here; and

b. Arts. 7326 and 7336, *Tex. Rev. Civ. Stat., 1925*, which are reproduced in full in Appendix E.

STATEMENT OF THE CASE

Manges and the Ranch Company were initially sued by the State of Texas and various local taxing authorities for *ad valorem* taxes allegedly due on large property holdings in south Texas. (See 587 S.W.2d 437-438; Appendix A, pp. 1-2.)

One of several defenses raised by the taxpayers was that the taxes of some of the authorities for some of the tax years in question were not collectable because there was no proof, in whatever official source the taxing agencies recorded their actions, that the taxes in question had ever been levied for the years in question.*

After a lengthy trial and the introduction of a veritable mountain of proof in the form of minutes and other official documents, the trial court affirmatively found that he "*** [could] not find as a fact ***" whether Duval County, the Reclamation District, or the School Districts "*** did or did not act during the years in question to levy the taxes in question. ***" (Addi-

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* As used in this petition, "levy" means the legislative act by which a political entity imposes a tax; without a "levy" there is no tax. See *Yorktown Independent School District* v. *Afflerbach*, 12 S.W.2d 130, 133 (Tex. Com. App. 1929). Proving a "levy" is the first burden in any action to collect a tax. *Flower Grove Independent School District* v. *Koger*, 77 S.W.2d 602, 603 (Tex. Civ. App., 134, writ dism.).

tional Findings of Fact, Nos. 1-3, Appendix B, pp. B-11 - B-13.)*

What the trial court did to hold the taxes validly levied was to find that a so-called presumption in the Texas statutes [Arts. 7326 and 7336] established the legislative act of levy and that such presumption was not rebutted. (Additional Findings of Fact Nos. 1-3; Appendix B, pp. B-11 - B-13.)

It is *very* important to note that the statutory presumption relied upon is the only vehicle by which the trial court was able to find that the taxes in question were ever lawfully created. The court specifically found, as to each relevant taxing authority, that there was no evidence of its levy

> "*** (a)side from the statutory presumption and prima facie case created by Plaintiff's Tax Records in evidence here. ***" (Additional Findings of Fact Nos. 1-3; Appendix B, pp. B-11 - B-13.)

Manges and the Ranch Company appealed to Texas' Court of Civil Appeals for the Fourth Supreme Judicial District, the appropriate intermediate appellate court, which affirmed after minor reformation of the judgment (not important here). (See Appendix A.)

It is the opinion of the court of civil appeals in interpreting Arts. 7326 and 7336 which raises the Constitutional issue upon which this petition is based.

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* The levies of only these three taxing authorities need be looked to because (i) Freer Independent School District came into existence after the tax years in question and it merely stands in the shoes of the Benavides Independent School District, (ii) the levy and assessment of the taxes of the vocational school district is handled through the county, and (iii) the levy of the State of Texas is created by constitution and is not questioned.

Facially, the court's opinion is in a hopeless state of confusion as to the effect of the statutes and the nature of the presumption they create. At one time or another in its opinion, the court of civil appeals gives the presumption it found in the statutes three different effects. For example, by implying that Manges and the Ranch Company could "*** meet and overcome ***" the presumption with evidence (587 S.W.2d 442), the court implied the presumption was rebuttable. But, by saying that the *prima facie* case established by the introduction of delinquent tax rolls cast the "*** burden of *persuading* the trier of fact that the assessment [note the confusion of "levy" and "assessment"] . . . on the challenging taxpayer ***" (587 S.W.2d 443), the court implied that the so-called presumption is of the type which shifts the burden of proof. Finally, contradicting itself again, the court implied that the presumption is probative evidence (and probably conclusive evidence) of the fact of levy when it stated that "*** 'prima facie evidence' is evidence upon which a finding may rest ***" *and* further held that evidence clearly in contradiction of the presumption could not overcome it. (587 S.W.2d 436.)

Regardless of what effect the court of civil appeals gives the presumption, the court has interpreted and applied Arts. 7326 and 7336 so as to permit them to create *ex post facto* governmental action and to create a tax after the fact in a context where the governmental agencies cannot prove (and the trial court has specifically found they cannot prove) that they ever acted at all to create the taxes in question.

It is giving the presumption such effect which Manges and the Ranch Company contend violates due process.*

REASONS WHY THE WRIT SHOULD ISSUE

Statutory presumptions are not, and never have been, free of the constitutional restraint of due process. See *Tot* v. *United States*, 63 S.Ct. 1241, 319 U.S. 463, 468, 87 L.Ed. 1519, 1524 (1943); *Leary* v. *United States*, 89 S.Ct. 1532, 395 U.S. 6, 36, 23 L.Ed.2d 57, 82 (1969); *United States* v. *Gainey*, 85 S.Ct. 754, 380 U.S. 63, 13 L.Ed.2d 658 (1965). This is true of presumptions which operate in the criminal and civil arena, alike. Cfr. *Leary*, supra, and *Western & A. R. Co.* v. *Henderson*, 49 S.Ct. 445, 279 U.S. 639, 641-642, 73 L.Ed. 884, 887-888 (1928).

More specifically, presumptions relative to taxation and procedures for collecting taxes have received particularly close scrutiny *vis a vis* the constitution and have frequently been invalidated as contravening due process. Se particularly: *Heiner* v. *Donnan*, 52 S.Ct. 358, 285 U.S. 312, 76 L.Ed.2d 772 (1931); *Speiser* v. *Randall*, 78 S.Ct. 1332, 357 U.S. 513, 2 L.Ed.2d 1460 (1958).

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* The federal question raised came into existence when the court of civil appeals interpreted Arts. 7326 and 7336 as it did. The point was raised in (i) the motion for rehearing in the court of civil appeals (pp. 14-16, 24-30), (ii) the application for writ of error to the Supreme Court of Texas (pp. 3-4, 11, 23), and (iii) the motion for rehearing on application for writ of error. (Assignments Nos. 13, 15, 17, 19, and 22.) These documents will be certified as part of the record filed in this court.

1. *Rational Connection as the Requisite Standard of Due Process.*

The most often cited standard for determining the constitutionality of a statutory presumption, *vel non*, whether it be criminal or civil, is that announced in *Tot* v. *United States*, supra, to wit:

> "**** (A) statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience. *** (W)here the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them it is not competent for the legislature to create it as a rule governing the procedure of courts." (319 U.S. 468, 87 L.Ed. 1524.)

See also *U.S. Dept. of Agriculture* v. *Murry*, 93 S.Ct. 2832, 413 U.S. 508, 514 37 L.Ed.2d 767, 773 (1973).

2. *Lack of Rational Connection Between Delinquent Tax Rolls and Levy.*

In considering the propriety of the presumption in question, one must keep clearly in mind the distinction between "levy" of taxes, which is the fundamental or organic act creating a tax, and "rendition", "assessment", and all other procedures for the imposition of a lawfully created *ad valorem* tax and its collection.

The Texas statutes in question rather clearly are intended to aid taxing authorities in the collection of a tax which previously has been lawfully created. Indeed the statutes limit themselves to such procedural aspects of collection — e.g., *Art. 7326* states that the

delinquent tax rolls which raise the presumption are evidence of only "*** true and correct amounts of taxes and costs due ***", while *Art. 7336* purports to make the delinquent tax rolls prima facie evidence of the "*** *regularity* of listing, assessing, and levying all taxes therein set out ***", the use of the word "regularity" implying that the governmental body has either levied, or attempted to levy, the tax in question and the impediment protected by the presumption is procedural or technical.

Simply put, the presumption created by these statutes appears to operate on the assumption that there has been a levy or an attempt to levy taxes; indeed, there is Texas authority so construing the presumption. See *Crocker* v. *Santo Consolidated Independent School District*, 116 S.W.2d 751 (Tex. Civ. App., 1938, writ dism.). Had the lower court restricted the presumption to technicalities and procedures, rather than the actual creation of a tax, Manges and the Ranch Company would have no complaint.

Regardless of how logical may be the relationship between preparation of delinquent tax rolls and compliance with technical details for enforcing the collection of taxes, Manges and the Ranch Company are comfortable with the proposition that it is fair and equitable for a taxpayer to shoulder the major portion of the burden of proof when the attempt is to avoid payment of a duly and lawfully levied tax by reliance upon human oversight or simple noncompliance with technical procedures.

It is a much different proposition, however, when taxing authorities are permitted to rely upon a statutorily-created presumption that they have in fact cre-

ated a tax by legislative fiat. This Court would not hesitate to find constitutionally infirm a statute, ordinance, or other legislative act which created a tax in the present year, making it applicable to a given number of years in the past. Permitting the fundamental act of levy to be established, and established alone, by presumption from delinquent tax rolls prepared months or years after the presumed levy has precisely the same effect as an *ex post facto* law.

Under the Texas statutes, preparation of delinquent tax rolls is a ministerial act. Cfr. Art. 7321, Tex. Rev. Civ. Stat., 1925. Manges and the Ranch Company suggest that there is absolutely nothing inherent in the preparation of delinquent tax rolls which makes it logical, fair, or reasonable to assume that the legislative/governmental body, with authority to create a tax, has done so. If there is such a relationship, surely it is "*** so strained as not to have a reasonable relation to the circumstances of life as we know them ***". (319 U.S. 468, 87 L.Ed.2d 1524.)

For that reason alone, Manges and the Ranch Company submit that the construction of Arts. 7326 and 7336, *Tex. Rev. Civ. Stat., 1925*, so as to permit the presumption they create to establish the legislative act of "levy" constitutes a denial of due process *Tot* v. *United States*, supra; *Western & A. R. Co.* v. *Henderson*, supra; *Heiner* v. *Donnan*, supra.

3. *Lack of a Fair Opportunity to Rebut.*

While application of the presumption to the *fact* of levy (as opposed to its *regularity*) is believed to be unconstitutional *per se*, equally problematical and un-

constitutional is the manner in which the presumption has been held to function.

Manges and the Ranch Company do not ask the Court to resolve whether the presumption in Arts. 7326 and 7336 are conclusive, or constitute hard evidence, or are rebuttable procedural devices. Resolution of that issue from the reasoning in the lower court's opinion is impossible. They do ask the Court to say, however, that the operation of the presumption, whatever its effect, is so unfair as to deny due process.

Manges and the Ranch Company shouldered the burden (which they should not have had in the first place) of proving "levy" by producing minutes and other official documents of the various taxing authorities which proof affirmatively showed no levy or no lawful levy in various years. They further proved that for other tax years, no minutes existed for some of the taxing authorities.* In other words, Manges and the Ranch Company made their case from official sources

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* Texas law specifically requires the taxing authorities in question to take affirmative action to levy taxes: (i) School districts must levy taxes by ordinance, *Crystal City Independent School District* v. *Griffith-Williams Cattle Co.*, 575 S.W.2d 336-338 (Tex. Civ. App., 1979, writ ref., n.r.e.), (ii) the county must make a levy in a regular meeting with all county commissioners present, Art. 2354, *Tex. Rev. Civ. Stat., 1925;* and (ii) the water district follows the procedures of the county. Sec. 51.562, *Water Code, Tex. Rev. Civ. Stat., 1925.*

Likewise, in Texas, these political entities speak to the public through, and record their official actions in, their minutes. *Gano* v. *County of Palo Pinto*, 71 Tex. 99, 83 S.W. 634, 635 (1888). Such minutes are deemed to be the "*** highest evidence ***" of the entities' action. *Afflerbach, supra,* at 12 S.W.2d 132.

The documentary evidence is too voluminous to certify in full. Attached as Appendix F is a summary of what the official records of the relevant taxing authorities showed.

which should have embodied the acts of the taxing authorities and upon which taxpaying members of the public should be able to rely. Yet, according to the court of civil appeals' interpretation of Art. 7326 and Art. 7336, such proof was insufficient to overcome a presumption of the fact of levy.

It is idle to ask the rhetorical question: What more could a taxpayer prove? The court of civil appeals did not bother to enlighten us on that score. What is important is that, even if the presumption is rebuttable by some manner of proof not disclosed by the court's opinion, the means by which the presumption in question could be rebutted are so unavailable and the proof so ethereal that the burden of rebutting the presumption passes far beyond notions of fair play and amounts to a constitutional taking without due process. As this Court has said on many occasions:

> "*** a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the 14th Amendment. ***"

Heiner v. *Donnan*, supra, at 285 U.S. 329, 76 L.Ed. 781; *Vlandis* v. *Kline*, 93 S.Ct. 2230, 412 U.S. 441, 446, 37 L.Ed.2d 63, 68 (1973); *Schlesinger* v. *Wisconsin*, 46 S.Ct. 260, 270 U.S. 230, 240, 70 L.Ed. 556, 564 (1926).

CONCLUSION

Long ago, this court recognized that "*** the power to tax involves the power to destroy ***" and that "*** the only security against the abuse of this power is found in the structure of the government itself ***", namely in the due process clause of the Constitution. *McCulloch* v. *Maryland*, 4 Wheat. 316, 428, 431, 4 L.Ed. 579, 607 (1819).

That the power may be so abused is no more evident than in the lower court's construction of the Texas statutes under consideration. A construction of a presumption which permits it to establish an exercise of the power to tax (i) where there is no official record of the exercise of that power and (ii) where a judicial tribunal finds that it cannot find the power was exercised is pregnant with ominous consequences.

The shield provided by the presumption, as construed and applied by the court below, is a clear invitation to taxing authorities to cover up negligent failure to act or act properly; inded to create taxes where none exist by the mere promulgation of a spurious delinquent tax roll, and to recover in delinquent tax suits solely by the strength of those rolls on the theory that they conclusively establish the levy or put the taxpayer to an impossible burden of disproving it.

The limits to which the lower court has gone in construing and applying the presumption in Arts. 7326 and 7336 thus goes too far in trampling the constitutional rights of taxpayers and trespassing the limits of due process.

For that reason, Manges and the Ranch Company urge this Court to hold:

(i) that the extension of the presumption in Art. 7326 and Art. 7336, *Tex. Rev. Civ. Stat., 1925*, to encompass the official levy or creation of taxes is unconstitutional; and/or

(ii) that the proof requirements necessary to rebut the presumption (if it is rebuttable) are so unfair as to constitute a denial of due process.

WHEREFORE, PREMISES CONSIDERED, petitioners pray that their petition be granted, that writ of certiorari issue, and, upon final hearing that the judgments of the courts below be reversed. Petitioners additionally pray for such other and further relief to which they may justly be entitled at law or in equity.

Respectfully submitted,

MIKE A. HATCHELL
Attorney for Petitioners

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Petition for Writ of Certiorari to the Court of Civil Appeals for the Fourth Supreme Judicial District of Texas has been served upon counsel for respondents, Mr. G. Rudolph Garza, Jr., P. O. Box 5245, Corpus Christi, Texas 78405, and Mr. Homer C. Canales, 65 South Wright Street, Alice, Texas 78332, by placing same in the United States mail, properly addressed and postage prepaid, on this the 16th day of September, 1980.

MIKE A. HATCHELL

APPENDIX A

OPINION OF THE COURT BELOW

Court of Civil Appeals
Fourth Supreme Judicial District

OPINION

DUVAL COUNTY RANCH COMPANY AND CLINTON MANGES,

Appellants,

v.

STATE OF TEXAS ET AL.,

Appellees.

NO. 16085.

Appeal from Duval County.

This is a delinquent tax suit.[1] The State of Texas, County of Duval, Duval County Vocational School District, and Duval County Conservation and Reclamation District, as plaintiffs, and Benavides Independent School District, and Freer Independent School District, as intervenors,[2] sued Duval County Ranch Company and Clinton Manges, as defendants, for personal judgment for the amount of tax indebtedness alleged to be due and for foreclosure on all the property

1. The appeal before us is from a trial consolidated of four separate actions against defendants for delinquent taxes.

2. During the years for which the delinquent taxes are sought, portions of the Benavides Independent School District were to an extent taken over by, or included within the bounds of, the Freer Independent School District.

involved, including surface lands and mineral and royalty interests.[3] Connecticut General Life Insurance Company and Bank of the Southwest, as lienholders, were made parties to the action by other pleadings. Duval County Ranch Company and Clinton Manges answered that the taxes sought to be collected were not legally listed, assessed, or levied, and that at the time of the suit Duval County Ranch Company did not own the minerals under the lands involved in the suit. Trial was to the court without a jury. The trial court held that Duval County Ranch Company was indebted for delinquent property taxes in the amount of $482,684.94, and that Clinton Manges was indebted for delinquent property taxes in the amount of $721,325.39. The trial court ordered a foreclosure of the tax lien on all the properties and a tax sale. The defendants have duly perfected their appeal. For the purpose of brevity three of the taxing agencies (the State of Texas, County of Duval, and Duval County Vocational School District) will at times hereinafter be referred to collectively as "Duval County." Benavides Independent School District and Freer Independent School District will be referred to as "School District," and Duval County Conservation and Reclamation District will be referred to as "Water District." Clinton Manges will be referred to as "Manges," and Duval County Ranch Company will be cited as "Ranch Company."

The trial court made extensive findings of fact and conclusions of law. Such findings accurately set forth

3. The Duval County Ranch Company, a Texas corporation, consists of approximately 75,000 acres of land in Duval and Webb Counties, owned in fee. In February, 1974, the Duval County Ranch Company gave a deed to the mineral interest to Clinton Manges.

much of the pertinent factual background and may be summarized as follows:

(a) The delinquent tax rolls of Duval County were offered and identified by Arnoldo Cuellar, County Tax Assessor-Collector, covering taxes collected by the Duval County taxing authorities. It was stipulated by all the parties that the delinquent tax rolls offered in evidence were properly authenticated and were the official delinquent tax records. Such tax records, the stipulation as to their authenticity, and various exhibits reflecting delinquent tax rolls for several years (commencing in 1971) were received in evidence, including the delinquent tax rolls with respect to the mineral interests;

(b) The Ranch Company introduced into evidence copies of the tax rolls and delinquent tax rolls, both as to the surface and oil and gas interests;

(c) The County Tax Assessor-Collector testified that delinquent taxes as shown upon the delinquent tax lists were unpaid;

(d) By agreement of the parties certified copies of the tax records of the Benavides Independent School District were received in evidence without requirement of further authentication, were identified by the school district's tax assessor-collector and were stipulated to be the "official Delinquent Tax Record of Benavides School District" and official tax rolls reflecting delinquent taxes as to the property involved. The school district tax assessor-collector testified that except for a partial payment which was reflected in intervenor's exhibits on taxes for the years 1973 and 1974, no other payments for taxes assessed against the property of the Ranch Company have been paid.

(e) The defendants introduced into evidence the purported minutes of the Commissioner's Court of Duval County, which as offered and received do not reflect any action of the Commissioners Court regarding the levy of ad valorem taxes for the years 1971 through 1975. The minutes reflect that at a meeting on July 31, 1975, there was a motion that "a total rate of $2.20 be approved and adopted for the year 1976 [sic] . . . ." The minutes as introduced do not reflect any action of the Commissions Court to levy ad valorem taxes in 1976. (Except to the extent that the exhibit speaks for itself, the trial court was unable to find as a fact that this exhibit reflects whether there were other meetings and/or actions by the Commissioners Court not shown by these minutes.) Neither party offered the testimony of any member of the Commissioners Court, County Clerk, or any other person with knowledge of the facts in connection with the listing, assessing and levying of the taxes in question.

(f) Minutes of a meeting of the Directors of the Water District for the period prior to July 10, 1972, had "disappeared." The defendants introduced the subsequent minutes of meetings of the Water District. The minutes do not reflect any action of the Board of Directors as to the levy of ad valorem taxes for the years 1971, 1972, 1973 and 1974. A motion was made at a meeting on July 29, 1976, according to these minutes, to set the ad valorem tax rate for the Water District. (Except to the extent that this exhibit speaks for itself, and aside from the statutory presumption and prima facie case created by introduction into evidence of the delinquent tax records, the trial court was unable to find as a fact whether the Directors of the Water District did or did not act during the years in question to levy the taxes.)

(g) There was testimony that all minutes of the meetings of the Board of Trustees of the Benavides

Independent School District were "missing" for all times prior to January 7, 1974. Subsequent minutes of the school district were introduced by defendants. The minutes offered by defendant do not reflect any action to levy ad valorem taxes for the year 1974. There was a "motion" to levy ad valorem taxes for the year 1975 in the minutes dated August 14, 1975. No further evidence was offered by any party as to other minutes or to other action that may have been taken by the Board of Trustees of the school district in connection with the listing, assessing and levying taxes, except that the tax assessor-collector for the school district testified that tax rates were set for each year and in general testified as to action of the Board of Trustees levying taxes. (These exhibits were received with no assurance by any party that they constituted all of the minutes for the school district meetings for the period purported to be covered, and therefore, aside from the statutory presumption and prima facie case created by introduction into evidence of the delinquent tax records, the trial court was unable to find as a fact whether the Board of Trustees of the school district did or did not levy the taxes for the years in question.)

(h) Over objection, the intervenors introduced into evidence the budgets of the Benavides Independent School District as submitted to the Texas Education Agency [regarding] levies and tax rates. Some evidence as to a Board of Equalization hearing in 1975 was also offered.

(i) Secondary evidence tending to indicate tax levies by the plaintiffs for the several years were received over objection, namely, the stipulated testimony of the County Auditor, as to tax rates being set for the years in question and County budgets as filed with the State Comptroller, alluding to the several tax rates.

(j) The defendants offered into evidence a tax certificate from the Benavides Independent School District reflecting payment of all taxes through the year 1974, but withdrew such exhibits after evidence was offered that such certificate was fraudulent; that the Ranch Company had paid less than twenty-five per cent of the taxes owing; and that a false tax certificate has been issued by Tax Assessor-Collector Rodolfo Couling on the orders of George Parr.[4]

Other findings of fact made by the trial court are restated, as follows:

(1) The Delinquent Tax Rolls of Duval County received in evidence under a stipulation of all parties that they were the official Delinquent Tax Rolls for such County are sufficient to and do constitute the list of lands and lots and/or property on which taxes . . . . are delinquent within the purview of Article 7336 V.A.C.S. and Article 7326 V.A.C.S. Such Delinquent Tax Rolls also substantially comply with the requirements of Article 7321 V.A.C.S.

(2) Defendant [Duval County] Ranch [Company's] Exhibits 9 through 12 were the Delinquent Tax Records submitted by Duval County to the State Comptroller in accordance with Article 7321 V.A.C.S.

(3) The Delinquent Tax Records of the Benavides Independent School District received in evidence under a stipulation of all parties that they were the official tax records of such School District

4. There is evidence in the record that some officials of the Ranch Company were on some of the boards of the various tax authorities involved in this case; Rodolfo Couling, a former tax assessor-collector for the Benavides Independent School District, testified in some detail regarding questionable procedures in his office.

are sufficient and do constitute the records constituting the prima facie evidence under Article 7336 V.A.C.S., 7326 V.A.C.S. (by virtue of Article 7343 V.A.C.S.).

(4) The Delinquent Tax Lists of the Duval County Conservation & Reclamation District received under the stipulation of the parties as to their authenticity, were sufficient to and did constitute the records constituting prima facie evidence under Article 7326 & 7336 V.A.C.S.

(5) Except for the partial payment of approximately $30,000.00 by the Duval County Ranch Co., Inc., on February 12, 1975, to the Benavides Independent School District in connection with the issuance of the false Tax Certificate and the credits reflected on the Delinquent Tax Lists of the Plaintiff, none of the taxes in question, penalty, or interest have been paid.

(6) The defensive evidence offered by Defendants was insufficient to prevail as against the presumptions and the prima facie provisions of Article 7326 and 7336 V.A.C.S.

(7) All the taxes in question were assessed against the Duval County Ranch Co., Inc.

(8) Clinton Manges was conveyed a severed interest in oil, gas and minerals by the Ranch Company February 1, 1974.

The trial court also made conclusions of law, which are set forth as follows:

(1) By virtue of Article 7336 V.A.C.S. the Delinquent Tax Lists of Duval County in evidence constituted prima facie evidence that all the requirements of law were complied with as to the regularity of listing, assessing and levying all taxes. By virtue of Article 7326 V.A.C.S. such Delinquent Tax Records constituted prima facie evidence of

the true and correct amount of taxes and costs due from the Defendant Ranch Company. Under Article 7321 V.A.C.S. there was also prima facie evidence that all requirements of law had been complied with by Plaintiffs. Accordingly, the Plaintiff Duval County and those taxing agencies for which it is the Tax Assessor-Collector are entitled to recover as against the Duval County Ranch Co. for an [sic] in the amounts shown by the Delinquent Tax List.

(2) Defendant Ranch Co., Inc. is bound by its Exhibits 9 through 12 which were the Delinquent Tax Records submitted to the State Comptroller in accordance with [Article] 7321 and Defendant's own Exhibits constituted prima facie evidence that all of the requirements had been complied with in the regularity of listing, assessing and levying the taxes in question of the Plaintiffs.

(3) By virtue of Article 7336 V.A.C.S. the Delinquent Tax Lists of the Benavides Independent School District in evidence constituted prima facie evidence that all the requirements of law were complied with as to the regularity of listing, assessing and levying all taxes. By virtue of Article 7326 V.A.C.S. such Delinquent Tax Records constituted prima facie evidence of the true and correct amount of taxes and costs due from the Defendant Ranch Company. Under Article 7321 V.A.C.S. there was also prima facie evidence that all requirements of law had been complied with by Plaintiffs. Accordingly, the Plaintiff Benavides Independent School District and those taxing agencies for which it is the Tax Assessor-Collector are entitled to recover as against the Duval County Ranch Co. for and in the amounts shown by the Delinquent Tax Lists.

(4) By virtue of Article 7336 V.A.C.S. the Delinquent Tax Lists of the Duval County Conser-

vation & Reclamation District in evidence constituted prima facie evidence that all the requirements law were complied with as to the regularity of listings, assessing and levying all taxes. By virtue of Article 7326 V.A.C.S. such Delinquent Tax Records constituted prima facie evidence of the true and correct amount of taxes and costs due from the Defendant Ranch Company. Under Article 7321 V.A.C.S. there was also prima facie evidence that all requirements of law had been complied with by Plaintiffs. Accordingly, the Plaintiff Duval County Conservation & Reclamation District and those taxing agencies for which it is the Tax Assessor-Collector are entitled to recover as against the Duval County Ranch Co. for and in the amounts shown by the Delinquent Tax List.

(5) Defendant Clinton Manges took conveyance of the mineral interest with the taxes delinquent thereon February 1, 1974. Plaintiffs and Intervenor are entitled to recover as against Clinton Manges with an Order of Sale as to the delinquent taxes shown upon their Delinquent Tax Lists on the oil and gas in place.

(6) The Plaintiffs and Intervenor are entitled to judgment and relief as set out in the Judgment heretofore signed by the Court.

Defendants assert twenty-eight points of error in which they complain that (1) the trial court erroneously held that the defensive evidence was insufficient to prevail as against the presumptions and prima facie provisions of Articles 7326 and 7336, Texas Revised Civil Statutes; (2) the evidence supporting the trial court's findings as to the regularity of listing, assessing and levying was either legally or factually insufficient; (3) there was double assessment and taxation of the subject mineral interest; (4) the trial court erred in

decreeing a foreclosure of a lien against the real estate and mineral properties involved in bulk, or in groups of more than one tract, because such a foreclosure is contrary to law; and (5 the trial court incorrectly held that the lienholders, Connecticut General Life Insurance Company and Bank of the Southwest, were duly served with process, and in holding that a lien exists against the real estate and mineral interests involved superior to all other liens, charges and encumbrances of any character.

Statutory Presumptions

The procedural posture of the taxpayer who challenges a property taxation scheme is vital in determining what he must do in order to prevail. Typically, he only has three alternatives. First, he may bring an action to enjoin the collection of taxes before the taxing jurisdiction has formally approved the tax rolls and begun the actual process of collecting taxes. Second, he may seek an injunction after the tax rolls have been approved and the collection process has begun. Third, he may allow a taxing scheme to go into effect and then challenge the assessment as a defense to a suit brought by the taxing unit for delinquent taxes. Here, the taxpayers chose the third alternative and as a result assumed a much more onerous burden. Defenses in a suit brought by taxing agencies for delinquent taxes are limited.[5] One taxing authority has stated that if a

5. Article 7329 [Defense to tax suits] provides:

There shall be no defense to a suit for collection of delinquent taxes, as provided for in this chapter except:

1. That the defendant was not the owner of the land at the time the suit was filed.

2. That the taxes sued for have been paid, or

taxpayer delays his challenge until the board of equalization has approved the tax roll and the process of tax collecting has begun, his challenge has only a slim chance of success. In a delinquent tax suit the taxpayer labors under a heavy burden of proof due to failure to litigate his objections sooner. *See* Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEXAS L. REV. 885 (1973).

Under the record before us, defendants at no time prior to the filing of this suit ever made any official objection to the listing, assessing and levying of any of the taxes here involved, nor did they bring any action seeking to stop or enjoin any of such tax proceedings. Instead, they made no challenge until each of the plaintiff taxing authorities sought by judicial proceedings to collect the taxes which had been assessed by each respective authority and which remained unpaid.

Numerous statutes provide that the taxing jurisdiction can establish a prima facie case for the tax claim by the introduction of its official tax record. By introducing into evidence delinquent tax rolls, the taxing entity makes out a prima facie case and is entitled to judgment in the absence of any proven defense in opposition thereto. In Stratton v. Del Valle Independent School District, 547 S.W.2d 727 (Tex.Civ.App. — Austin 1977, no writ), the Court stated that "[b]y the admission of the certified copy of appellee's delinquent tax record, a presumption was raised that there was a valid levy and assessment of the taxes in issue made

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3. That the taxes sued for are in excess of the limit allowed by law, but this defense shall apply only to such excess.

TEX. REV. CIV. STAT. ANN. art. 7329 (Vernon 1960).

by a legally constituted taxing authority and that all conditions precedent to such assessment and levy had been performed." *See* Newton v. Highland Park Independent School District, 361 S.W.2d 916 (Tex.Civ.App. — Austin 1962, no writ); Whaley v. Nocona Independent School District, 339 S.W.2d 265 (Tex.Civ.App. — Fort Worth 1960, writ ref'd).

In Keystone Operating Co. v. Runge Independent School District, 558 S.W.2d 82 (Tex.Civ.App. — San Antonio 1977, writ ref'd n.r.e.), this Court was confronted with a situation wherein the taxing agencies introduced into evidence the pertinent delinquent tax records and evidence to the effect that such taxes had not been paid. Under the provisions of Article 7326, we held that

> the introduction of such evidence constitutes 'prima facie evidence of the true and correct amount of taxes and costs due by' defendant. At the very least, the statutory provisions assigning prima facie value to the official tax records has the effect of casting upon the taxpayer the burden of producing evidence of the existence of recognized grounds for avoiding the tax. State v. Whittenburg, 153 Tex. 205, 265 S.W.2d 569, 572 (1954). The language of the cases indicates that the statutory provision goes further and places on the taxpayer the burden of persuading the trier of fact that the assessment is invalid.

See also Kirkman v. City of Amarillo, 508 S.W.2d 933 (Tex.Civ.App. — Amarillo 1974, writ ref'd n.r.e.); Campbell v. City of Houston, 464 S.W.2d 372 (Tex.-Civ.App. — Houston [14th Dist.] 1971, no writ); Stone v. City of Dallas, 244 S.W.2d 937 (Tex.Civ.App. — Waco 1951, writ dism'd); Adams v. Royse City, 61

S.W. 2d 853 (Tex.Civ.App. — Dallas 1933, writ ref'd); 21 J. HOWELL, PROPERTY TAXES §§ 391-411 (Texas Practice 1975). The truth and weight of the evidence offered by a defendant tending to meet and overcome the prima facie evidence offered by a taxing agency are questions to be resolved by the trier of fact.

A question presented in this appeal is whether the mere introduction into evidence of the taxing agency's silent minutes is sufficient positive evidence as a matter of law to rebut the statutory presumption in favor of a valid tax listing, assessment and levy. Defendants contend that the introduction of these minutes conclusively rebutted the prima facie proof and presumptions of Articles 7326 and 7336. We disagree.

It has previously been held that where an order of the Commissioners Court was never duly recorded in the minutes of the Court, one may prove by parol evidence that such order was in fact duly made and passed by said Court, over the objection of the opposing taxpayer that such an order can be shown only by the minutes thereof and that proof thereof cannot be made by parol. Mecom v. Ford, 113 Tex. 109, 252 S.W. 491 (1923).

This Court in Keystone Operating Co. v. Runge Independent School District, 558 S.W.2d 82 (Tex.Civ.-App. — San Antonio 1977, writ ref'd n.r.e.), after thoroughly discussing the prima facie case established by the introduction of the taxing agency's delinquent tax rolls, stated that the burden of persuading the trier of the fact that the assessment is invalid is placed on the challenging taxpayer. "Prima facie evidence" is evidence upon which a finding may rest. Article 7326

permits an inference to be drawn from the existence of certain facts, and this inference may be drawn even though evidence indicating the non-existence of the inferred fact has been introduced.

Defensively, neither Manges nor the Ranch Company offered any testimony or explanation with respect to their non-payment of the taxes sought. We have concluded that the mere introduction of the silent minutes was not sufficient positive evidence to rebut the statutory presumptions created by Articles 7326 and 7336. Moreover, there was other evidence introduced before the trial court as to the regularity of the tax proceedings in question.

Waiver and Estoppel

The evidence shows that on at least three occasions the Ranch Company made partial payment of taxes on the properties involved. Plaintiff asserts that by such partial payment defendants either waived any irregularities in the listing, assessing and levying of taxes, or that defendants are now estopped from attacking such listing, assessing and levying. Plaintiffs urge that a voluntary and unconditional tender of payment by defendant dispenses with the need for proof of facts that would otherwise be necessary in order for plaintiffs to recover upon their cause of action and that having made a tender of a part of the amount sued for, the defendant taxpayer is precluded from now denying the legality of all of it. *See* Murchison v. Post Independent School District, 258 S.W.2d 229 (Tex.-Civ.App. — Amarillo 1953, writ ref'd n.r.e.); Doneghy v. State, 240 S.W.2d 331 (Tex.Civ.App. — Amarillo 1951, no writ); Bell v. Turkey Independent School

District, 214 S.W.2d 834 (Tex.Civ.App. — Amarillo 1948, writ ref'd n.r.e.); State Fair of Texas v. Seay, 98 S.W.2d 232 (Tex.Civ.App. — Fort Worth 1936, writ dism'd); City of Rising Star v. Dill, 259 S.W. 652 (Tex.Civ.App. — Fort Worth 1923) *aff'd*, 269 S.W. 769 (Tex. 1925). These cases stand for the general proposition that by tendering part of the taxes claimed the taxpayer admits the justness of the tax to the extent of the amount tendered and is estopped from disputing his liability to that extent. There is language in some of these decisions indicating that, since the same proceedings produced the amount of taxes tendered as partial payment by the taxpayer as well as the amount denied to be owing by him, this is tantamount to a waiver and estoppel as to all the taxes listed, assessed and levied in such proceeding. While we do not regard these cases alone as determinative of the case before us, these authorities provide an additional ground for upholding the judgment as to those portions of the delinquent taxes involved, and, particularly so, in view of the fact that the payments or tenders were unconditional and without limitation.

Assessment of Mineral Interests

Defendants contend that in some instances there was double assessment of minerals for tax purposes; that Manges was not the owner of the minerals for some of the years in which the mineral taxes were adjudged against him; and that the Ranch Company did not own the minerals at the time the tax suits were instituted.

Under the record, we do not find any such double assessments on the subject mineral interests. It is a

common practice when there has been a severance of the minerals, particularly where production is involved, to have separate tax assessments of the mineral estate and the surface estate. It is a well-recognized principle of law that after the mineral estate has been severed by the owner from the land, the same is assessed for taxes and the owner of the mineral estate is liable for taxes to the same extent that property owners are liable for any other tax. *See* Humble Oil & Refining Co. v. State, 3 S.W.2d 559 (Tex.Civ.App. — Waco 1927, writ ref'd). It is undisputed that for the tax years 1971, 1972, 1973 and 1974, the Ranch Company was assessed as the owner of the surface lands involved and was at the same time assessed separately as to the oil, gas and mineral interest. There was a severance as to a portion of the minerals in 1965 as shown by a deed from the Ranch Company to Humble Oil & Refining Company, wherein Humble was conveyed a 30.93 per cent interest in certain minerals. An examination of the oil properties involved, as shown in the delinquent tax records, indicates percentage ownerships in the oil and gas properties, with each mineral interest being designated in percentage points. The records show that the Ranch Company was assessed a percentage ownership interest either as to royalty interest or as to other mineral interests. This is a proper method of assessment. There is no evidence that defendants ever questioned the separate valuation of the mineral interests or complained of any double taxation in advance of the original tax levy in the present action. There was an additional severance in 1974 when Clinton Manges was conveyed certain mineral interests by the Ranch Company. The trial court assessed taxes against Manges for the mineral interests involved for the years 1971

through 1976. Manges did not own these mineral interests until 1974 when he received a conveyance of such mineral interests from the Ranch Company. The trial court found that Manges assumed the taxes. Apparently on this basis, and on the additional fact that there were delinquent mineral taxes on such property at the time of such conveyance, the trial court rendered judgment against Manges for all of the years involved. The record contains a copy of the deed which provides only that Manges assumed the taxes for 1974 on the properties therein conveyed.

The taxes on the mineral interests for the years involved remain unpaid. They are either the responsibility of Clinton Manges or the Ranch Company, or both. Under the circumstances, we have concluded that the portion of the judgment awarding plaintiffs and intervenors the sum of $721,325.39, assessed solely against Manges, should be reformed to provide that the judgment as to such amount is assessed against Clinton Manges and Duval County Ranch Company, Inc., jointly.

Bulk Assessment

Defendants also complain that the trial court erred in decreeing a foreclosure of the tax lien against the real estate and mineral property in bulk, or in groups of more than one tract, because such a foreclosure is contrary to law.

The property here involved is comprised of approximately 75,000 acres of land, which has been owned in fee by the Ranch Company for many years and was

so owned in 1971, the first year for which delinquent taxes were sought in the present tax suits.

Three tracts of property are involved in these suits. Tract One contains some 72 parcels totaling 49,715.97 acres; Tract Two contains some 40 parcels totaling 25,710.25 acres; and there are also some 172 separate oil and gas interests. Effective on February 1, 1974, the Ranch Company conveyed to Clinton Manges all of the oil, gas and mineral rights it owned in and under the ranch.

Judicial foreclosure of tax liens on real property is provided for in Article 7326. This statute sets forth in detail the provisions as to such foreclosure proceedings. It has been held that the lien provided for by Article VIII, Section 15, of the Texas Constitution (and the declaratory statute enacted pursuant thereto) attaches only to each separate tract of land for the taxes assessed against it. Richey v. Moor, 112 Tex. 493, 249 S.W. 172 (1923). If, however, the owner uses several tracts of land together or if he renders several tracts of land together, an *in solido* (or bulk) assessment is valid and the lien securing the tax extends over the entire parcel. *See* Victory v. State, 138 Tex. 285, 158 S.W.2d 760 (1942); 21 J. HOWELL, PROPERTY TAXES § 480 (Texas Practice 1975). If the consolidation of the tracts here involved constituted an erroneous assessment, that assessment was in effect validated by Article 7351, which has been held to validate an assessment wherein the assessor failed to give a separate value on each lot, block or tract of land, or stated in other terms, where the assessor made a "bulk assessment." Stratton v. Del Valle Independent School District, 547 S.W.2d 727 (Tex.Civ.App. — Austin 1977,

no writ). Defendants' points of error complaining of the bulk assessment are overruled.[6]

Lienholders

By a number of points of error defendants complain that the trial court erred in holding that the lienholders were served with process and were properly before the court, and that the plaintiffs' and intervenors' tax liens were superior to all other liens, charges or encumbrances. It must be remembered that none of the lienholders perfected an appeal. Defendants in their brief acknowledge that both defendants were at one time served with process; that Connecticut General Life Insurance Company filed an original answer and that Bank of the Southwest also filed an original answer. The judgment recites that such lienholders were duly served with process and answered herein, but failed to appear on their behalf. In view of these findings, and the additional fact that neither of such lienholders has perfected an appeal, we do not deem it necessary to further discuss defendants' contentions in this regard. All of defendants' points of error pertaining to such lienholders are overruled.

We have concluded that (1) the trial court correctly held that the defenses and evidence offered by the defendants was insufficient to prevail as against the

6. If the defendant shall, at any time before the sale, file with the officer in whose hands the order of sale shall be placed, a written request that the property be divided and sold in smaller tracts than the whole, together with a description of such smaller tracts, the request shall be granted and the officer shall sell only as many subdivisions as are necessary to satisfy the amount due. 21 J. HOWELL, PROPERTY TAXES § 493 (Texas Practice 1975).

presumption and provisions of Articles 7326 and 7336; (2) there was legally and factually sufficient evidence to support the trial court's findings as to the regularity of the listing, assessing and levying of taxes as to all taxing authorities involved; (3) the trial court correctly decreed a foreclosure against the real estate and mineral properties; and (4) the trial court correctly held that the lienholders were properly served with process and that the plaintiffs' and intervenors' tax liens were superior to all other liens, charges or encumbrances of any character. We have also concluded that the taxes for the mineral interests adjudged against Manges should be assessed jointly against Manges and Duval County Ranch Company, Inc.

All of defendants' points of error not herein specifically discussed have been considered, and all are overruled.

The judgment is reformed to provide that the portion of the judgment adjudging taxes against Clinton Manges in the sum of $721,325.39, which covers mineral taxes on the properties here involved, is changed so as to provide that such taxes are assessed jointly against Clinton Manges and Duval County Ranch Company, Inc. As reformed, the judgment is affirmed.

FRED V. KLINGEMAN,
Associate Justice.

Opinion delivered and
filed July 11, 1979.

APPENDIX B

TRIAL COURT FINDINGS OF FACT AND CONCLUSIONS OF LAW

CAUSE NO. 8930

THE STATE OF TEXAS	)	IN THE DISTRICT COURT
VS	:	OF DUVAL COUNTY,
DUVAL COUNTY RANCH	)	Texas 229th
Co., Inc.	)	JUDICIAL DISTRICT
& CLINTON MANGES	)	

ORDER

The following Findings of Fact and Conclusions of Law are entered herein as requested by Defendant, Duval County Ranch Co., Inc. and Clinton Manges:

FINDINGS OF FACT

This is a consolidation of four (4) separate actions brought by the State of Texas, County of Duval, Duval County Vocational School District and the Duval County Conservation and Reclamation District as Plaintiffs, against Duval County Ranch Co., Inc. and Clinton Manges, Defendants, for delinquent taxes. The Benavides Independent School District intervened for its delinquent taxes. The Court consolidated the four cases (Nos. 8930, 8965, 9133 and 9249) and ordered that all four cases be tried together under No. 8930. Subsequent to the taxes in question being assessed and becoming delinquent, the Benavides Independent School District was divided into the Benavides Independent School District and the Freer Independent School District (S.F. 197). The lands in question lay partly in

each of the two Districts. At the trial, the Freer Independent School District appeared by counsel and before any of the parties announced, the Freer Independent School District intervened in the suit and adopted the pleadings of the Benavides Independent School District (S.F. p. 9). Thereafter all the above named parties announced ready for trial (S.F. p. 25).

The delinquent tax rolls of Duval County were offered and identified by Arnoldo Cuellar, Tax Assessor-Collector for Duval County, covering taxes collected by the County, to wit: State, County, Vocational District and Conservation and Reclamation District. It was stipulated by all parties that the D.T.R. offered in evidence was properly authenticated and was the official D.T.R. of Plaintiffs (S.F. 43, 47-49) with the stipulation the D.T.R.'s were received in evidence as follows:

Surface:

1. Pages 178, 179 & 180 of the 1972 DTR (S.F. pgs. 32-40) Plaintiff's Exhibits 1 & 2 (S.F. p. 44).
2. 1973 Delinquent Tax Roll as to Duval County Ranch Co., Inc. Plaintiff's Exhibits 3 & 4 (S.F. pgs. 48 & 49).
3. Plaintiff's Exhibits 5 & 6, Delinquent Tax Rolls for 1974 for Duval County Ranch Co., Inc. (S.F. p. 53).
4. 1975 Delinquent Tax Rolls, State, County & Vocational District for Duval County Ranch Co., Inc. Plaintiff's Exhibits 7, 8 & 9 (S.F. p. 56). The 1975 and 1976 Delinquent Tax Rolls for the Reclamation District were maintained separately (S.F. p. 72).

5. 1976 Delinquent Tax Roll, State, County and Vocational School. Plaintiff's Exhibits 10 & 11 (S.F. p. 72).

6. 1975 & 1976 Delinquent Tax Rolls of the Reclamation District ("Water District") Plaintiff's Exhibits 12, 13 and 14 (S.F. p. 73).

Minerals:

1. 1971 Delinquent Tax Roll for Oil & Gas assessed to Duval Ranch Co., Inc., Plaintiff's Exhibits 18, 19 & 20 (S.F. pgs. 80-81).

2. 1972 Delinquent Tax Roll for Oil & Gas assessed to Duval County Ranch Co., Inc., Plaintiff's Exhibits 21, 22, 23 & 24 (S.F. p. 83).

3. 1973 Delinquent Tax Roll for Oil & Gas assessed to Duval County Ranch Co., Inc., Plaintiff's Exhibits 26, 27, 28, 29, 30 & 31 (objected to by the Defendants as being "Form 18" and not the best evidence) (S.F. p. 87).

4. 1974 Delinquent Tax Roll for Oil & Gas assessed to Duval County Ranch Co., Inc., Plaintiff's Exhibits 32 through 36 (objected to as being an "interim report" but stipulated to be the "official tax record"). S.F. p. 89) (S.F. p. 88).

5. 1975 Delinquent Tax Roll for Oil & Gas assessed to Duval County Ranch Co., Inc., Plaintiff's Exhibits 37 through 41 (S.F. p. 93).

6. 1975 D.T.R. of the Reclamation District, Oil & Gas & Royalties assessed to Duval County Ranch Co., Inc. Plaintiff's Exhibit 55 (S.F. p. 96).

7. 1976 Delinquent Tax Roll of the Reclamation District Oil & Gas assessed to Duval County Ranch Co., Inc. Plaintiff's Exhibits 42 through 54 (prepared by the Tax Assessor-Collector but

not yet presented to Commissioners Court of Duval County for acceptance (S.F. p. 99), together with the Official Tax Rolls, Plaintiff's Exhibits 56 through 67 (S.F. pgs. 107 & 108).

The Defendant Ranch itself introduced copies of the Tax Rolls and Delinquent Tax Rolls both as to surface and oil & gas. Defendant's Exhibit 9 (S.F. p. 138); Exhibit 10 (S.F. 142); Exhibit 11 (S.F. 143); Exhibit 12 (S.F. 144).

The County Tax Assessor-Collector of Duval County testified that the delinquent taxes as shown upon the Delinquent Tax Lists were unpaid.

By agreement of the parties (S.F. p. 174), certified copies of the Tax Records of the Benavides Independent School District were received in evidence without requirement of further authentication and were identified by the Benavides School District Tax Assessor-Collector, G. C. Raymond, and were stipulated to be the "official Deliquent Tax Record of Benavides School District together with the official Tax Roll" (S.F. p. 180), reflecting delinquent taxes assessed to Duval County Ranch Co., Inc., Intervenor's Exhibits No. 1 through 8 (S.F. pgs. 174-193). The Benavides School District Tax Assessor-Collector additionally testified that except for a partial payment which was reflected in Intervenor's Exhibits on taxes for the years 1973 and 1974, no other payments for taxes assessed against the Duval County Ranch Co., Inc. have been paid.

The Defendants introduced in evidence the minutes of the Commissioners Court of Duval County, Texas, Defendant's Exhibit 38. The minutes as offered and received do not reflect any action of the Commissioners

Court as to the levy of ad valorem taxes for the years 1971 through 1975. At a meeting of July 31, 1975, the minutes reflect that there was a motion that "a total rate of $2.20 be approved and adopted for the year 1976 (sic) . . . . " The minutes as introduced do not reflect any action of the Commissioners Court to levy ad valorem taxes in 1976. Except to the extent Exhibit 38 speaks for itself, there was no evidence as to whether there were meetings and/or action by the Commissioners Court not shown by these minutes. Neither party offered the testimony of any member of the Commissioners Court, County Clerk or any other person with knowledge of the facts in connection with listing, assessing and levying of the taxes in question.

Minutes of the Directors of the Duval County Conservation & Reclamation District for the period prior to July 10, 1972, had "disappeared". The Defendant introduced the subsequent minutes of the District, Defendant's Exhibit 34. The minutes do not reflect any action of the Board of Directors as to levying ad valorem taxes for the years 1971, 1972, 1973 and 1974. A motion was made at a meeting of July 29, 1976, according to the minutes, to set the ad valorem tax rate for the District. Except to the extent that Defendant's Exhibit 35 speaks for itself, there was no evidence as to whether there were other minutes, meetings and/or action of the District Board not shown by these minutes.

The evidence was that all minutes of the Board of Trustees of the Benavides Independent School District were "missing" for all times prior to January 7, 1974 (S.F. p. 218). Subsequent minutes of the Benavides Independent School District were introduced by Defendant, Defendant's Exhibits 15, 16 and 17. The min-

utes offered by Defendant do not reflect action levying ad valorem taxes for the year 1974. There was a "motion" to levy ad valorem taxes for the year 1975 in the minutes of August 14, 1975. No further evidence was offered by any party as to other minutes or to other action that may have been taken by the Board of Trustees of the Benavides Independent School District in connection with listing, assessing and levying taxes in any year not reflected by the minutes offered, except: The Tax Assessor-Collector for the Benavides Independent School District testified that tax rates were set each year and in general testified to action of the Board of Trustees levying taxes (S.F. p. 221, 234, 259-261); and, partial handwritten minutes reflecting action toward levying ad valorem taxes on one occasion were introduced through a former Tax Assessor-Collector (S.F. p. 363).

Over objection, the budgets of the Benavides Independent School District as submitted to the Texas Education Agency levies and tax rates were received in evidence, Intervenor's 9. Some evidence as to a Board of Equalization hearing for 1975 was offered (S.F. p. 361).

Secondary evidence tending to indicate levies in the several years by the Plaintiffs was received, over objection, to wit: the stipulated testimony of County Auditor, Donato Serna, as to tax rates being set for the years in question, Plaintiff's Exhibit 74 (S.F.p. 331), County Budgets as filed with the State Comptroller alluding to the several tax rates (S.F.327-329).

The Defendants offered in evidence a Tax Certificate from the Benavides Independent School District

reflecting payment of all taxes through the year 1974 (S.F.p.228) but the Defendants withdrew such Exhibit (S.F.p.333) after evidence was offered that such Certificate was fraudulent and that the officers of the Duval County Ranch Company, Inc. had paid less than 25% of the taxes owing but that a false Tax Certificate had been issued by the Tax Assessor-Collector Couling on the orders of George Parr. (S.F.pgs 238, 243, 293-294).

FINDINGS OF FACT

(1) The Delinquent Tax Rolls of Duval County received in evidence under a stipulation of all parties that they were the official Delinquent Tax Rolls for such County are sufficient to and do constitute the list of lands and lots and/or property on which taxes.... are delinquent within the purview of Article 7336 V.A.C.S. and Article 7326 V.A.C.S. Such Delinquent Tax Rolls also substantially comply with the requirements of Article 7321 V.A.C.S.

(2) Defendant Ranch's Exhibits 9 through 12 were the Delinquent Tax Records submitted by Duval County to the State Comptroller in accordance with Article 7321 V.A.C.S.

(3) The Delinquent Tax Records of the Benavides Independent School District received in evidence under a stipulation of all parties that they were the official tax records of such School District are sufficient and do constitute the records constituting the prima facie evidence under Article 7336 V.A.C.S., 7326 V.A.C.S. (by virtue of Article 7343 V.A.C.S.).

(4) The Delinquent Tax Lists of the Duval County Conservation & Reclamation District received under

the stipulation of the parties as to their authenticity, were sufficient to and did constitute the records constituting prima facie evidence under Article 7326 & 7336 V.A.C.S.

(5) Except for the partial payment of approximately $30,000.00 by the Duval County Ranch Co., Inc. on February 12, 1975, to the Benavides Independent School District in connection with the issuance of the false Tax Certificate and the credits reflected on the Delinquent Tax Lists of the Plaintiff, none of the taxes in question, penalty, or interest have been paid.

(6) The defensive evidence offered by Defendants was insufficient to prevail as against the presumptions and the prima facie provisions of Article 7326 and 7336 V.A.C.S.

(7) All the taxes in question were assessed against the Duval County Ranch Co., Inc.

(8) Clinton Manges was conveyed a severed interest in oil, gas and minerals by the Ranch Company February 1, 1974.

CONCLUSIONS OF LAW

1. By virtue of Article 7336 V.A.C.S. the Delinquent Tax Lists of Duval County in evidence constituted prima facie evidence that all the requirements of law were complied with as to the regularity of listing, assessing and levying all taxes. By virtue of Article 7326 V.A.C.S. such Delinquent Tax Records constituted prima facie evidence of the true and correct amount of taxes and costs due from the Defendant Ranch Company. Under Article 7321 V.A.C.S. there was also prima facie evidence that all requirements of

law had been complied with by Plaintiffs. Accordingly, the Plaintiff Duval County and those taxing agencies for which it is the Tax Assessor-Collector are entitled to recover as against the Duval County Ranch Co. for an in the amounts shown by the Delinquent Tax Lists.

2. Defendant Ranch Co., Inc. is bound by its Exhibits 9 through 12 which were the Delinquent Tax Records submitted to the State Comptroller in accordance with 7321 and Defendant's own Exhibits constituted prima facie evidence that all of the requirements had been complied with in the regularity of listing, assessing and levying the taxes in question of the Plaintiffs.

3. By virtue of Article 7336 V.A.C.S. the Delinquent Tax Lists of the Benavides Independent School District in evidence constituted prima facie evidence that all the requirements of law were complied with as to the regularity of listing, assessing and levying all taxes. By virtue of Article 7326 V.A.C.S. such Delinquent Tax Records constituted prima facie evidence of the true and correct amount of taxes and costs due from the Defendant Ranch Company. Under Article 7321 V.A.C.S. there was also prima facie evidence that all requirements of law had been complied with by Plaintiffs. Accordingly, the Plaintiff Benavides Independent School District and those taxing agencies for which it is the Tax Assessor-Collector are entitled to recover as against the Duval County Ranch Co. for and in the amounts shown by the Delinquent Tax Lists.

4. By virtue of Article 7336 V.A.C.S. the Delinquent Tax Lists of the Duval County Conservation & Reclamation District in evidence constituted prima facie

evidence that all the requirements of law were complied with as to the regularity of listing, assessing and levying all taxes. By virtue of Article 7326 V.A.C.S. such Delinquent Tax Records constituted prima facie evidence of the true and correct amounts of taxes and costs due from the Defendant Ranch Company. Under Article 7321 V.A.C.S. there was also prima facie evidence that all requirements of law had been complied with by Plaintiffs. Accordingly, the Plaintiff Duval County Conservation & Reclamation District and those taxing agencies for which it is the Tax Assessor-Collector are entitled to recover as against the Duval County Ranch Co. for and in the amounts shown by the Delinquent Tax Lists.

5. Defendant Clinton Manges took conveyance of the mineral interest with the taxes delinquent thereon February 1, 1974. Plaintiffs and Intervenor are entitled to recover as against Clinton Manges with an Order of Sale as to the delinquent taxes shown upon their Delinquent Tax Lists on the oil and gas in place.

6. The Plaintiffs and Intervenor are entitled to judgment and relief as set out in the Judgment heretofore signed by the Court for entry herein on February 2, 1978.

SIGNED FOR ENTRY: April 11th, 1978.

Judge Presiding

CAUSE NO. 8930

THE STATE OF TEXAS VS DUVAL COUNTY RANCH CO., INC. & CLINTON MANGES	) :)))	IN THE DISTRICT COURT OF DUVAL COUNTY, TEXAS, 229TH JUDICIAL DISTRICT

ORDER ON DEFENDANTS' REQUEST FOR ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Defendants, Duval County Ranch Co., Inc. and Clinton Manges having filed herein on April 17, 1978, their Request for Additional Findings of Fact and Conclusions of Law, IT IS ORDERED that the following additional Findings of Fact and Conclusions of Law and rulings upon such request be, and are, as follows:

ADDITIONAL FINDINGS OF FACT

1.

Defendants requested additional Findings of Fact Nos. 1 through 27 inclusive are denied, with the following qualifications and Findings:

> Defendants' Exhibits 37 and 38 were received in evidence upon Defendants' offer that the two exhibits "purport to be minutes of the Commissioners Court" (S.F. 367) not otherwise identified. No further evidence was offered as to whether the same were the true minutes of the Commissioners Court, complete or incomplete, nor otherwise whether there were meetings or actions of the Com-

missioners Court not reflected in such two exhibits. Under the record, the Court is unable to find as a fact whether Defendants' Exhibits 37 and 38 reflect any or all actions of the Commissioners Court of Duval County or whether Exhibits 37 and 38 are all (or even the true) minutes of the Commissioners Court for the period in question. Aside from the statutory presumption and prima facie case created by Plaintiff Tax Records in evidence here, there is no evidence upon which the Court can find whether the Commissioners Court of Duval County did or did not act during the years in question to levy the taxes in question.

2.

Defendants' requested Findings of Fact Nos. 28 through 47 inclusive are denied, with the following qualifications and Findings:

Defendants' Exhibits 34 and 35 were offered and received in evidence identified only as "minutes of the Duval County Conservation and Reclamation District, pages 1-A through 34-A (Exhibit 34) and Vol. 1, pages 1 to 129 (Exhibit 35)". Minutes of the District prior to July 10, 1972 had "disappeared". No further authentication of Exhibits 24 or 35 was had and no evidence offered that Exhibits 34 & 35 comprised all of the minutes nor that they accurately reflect the actions of the Board of Directors of the Reclamation District, either quantitatively or qualitatively. Aside from the statutory presumption and prima facie case created by Plaintiffs Tax Records in evidence here, the Court cannot find as a fact whether the Direct-

ors of the Reclamation District did or did not act during the years in question to levy the taxes in question.

3.

Defendant's requested additional Findings of Fact nos. 48 through 64 are denied, with the following qualifications and Findings:

Defendants' Exhibits 15, 16 & 17 were offered and received in evidence as minutes of the Board of Trustees of the Benavides Independent School District, referred to by Defendants' counsel as being "(the) books of record which are still available at the Benavides Independent School District" (S.F. 216). The custodian testified the exhibits were "(the) only records that (the Custodian) knows of that are minutes of the Benavides Independent School District" (S.F. 218-219); that the minutes "have been all over, but that all (he) could find" (S.F. 219). School District records prior to January 7, 1974, were "missing" (S.F. 203) and Exhibits 15, 16 & 17 were received with no assurance by any party that these exhibits even constituted all of the minutes of the School District for the period purported to be covered or reflected all the meetings and actions of the Board of Trustees. On this record, aside from the statutory presumption and prima facie case created by Plaintiffs' Tax Records in evidence here, the Court cannot find as a fact whether the Board of Trustees of the Benavides Independent School District did or did not levy the taxes in question during the years in question. The Court does, however, find that there was at least one meeting of the Board of Equaliza-

tion for the School District suggesting action of the Board of Trustees not reflected in Exhibits 15, 16 & 17; a meeting of August 8, 1975, reflected by handwritten notes of a former Tax Assessor-Collector, (S.F. 362-363).

4.

Defendants' requested Findings of Fact Nos. 65 through 74 inclusive are denied, except insofar as reflected in the Court's Findings of Fact and Conclusions of Law filed herein on April 11, 1978.

5.

Defendants' requested additional Findings of Fact Nos. 75 through 87 are here denied as not being requested Findings of Fact but rather requested commentaries by the Court as to pleadings on file, returns on citations, and matters reflected in the docket sheet.

6.

Defendants' requested additional Findings of Fact No. 88 is denied.

CONCLUSIONS OF LAW

Defendants' evidence is insufficient to rebut the prima facie case made out by the Plaintiffs under Articles 7321, 7326 and 7336 V.A.C.S. "Purported minutes" remaining minutes that had not "disappeared", minutes the custodian "knew about" subsequent to a date all minutes are conceded to be "missing" fall short of a rebuttal showing that the requirements of law were not complied with as to the regularity of listing, assessing and levying the taxes in

question in view of Article 7326 V.A.C.S.; of not being the true and correct amount of taxes and costs due in view of Article 7321 V.A.C.S.; and that all requirements of law had not been met in view of Article 7321 V.A.C.S.

Viewed in its most favorable light, Defendants' evidence was that their Exhibits 15, 16, 17, 34, 37 & 38 were some minutes of the governing boards of the several taxing agencies; and, at least on the dates and at the meetings shown by such minutes no effective action was taken to assess or levy the taxes in question. Absent a showing of an accurate and inclusive nature of such exhibits — and the more so in the light of a record of "disappearing", "missing" and "purported" minutes — the prima facie case made out by Plaintiffs Tax Records must prevail.

SIGNED FOR ENTRY: April 20, 1978.

_____

Judge Presiding

C-1

Court of Civil Appeals
Fourth Supreme Judicial District

JUDGMENT

DUVAL COUNTY RANCH COMPANY AND CLINTON MANGES,

Appellants,

v.

STATE OF TEXAS ET AL.,

Appellees.

Appeal from the 229th District Court of
Duval County

NO. 16085.

This cause came on to be heard on the transcript of the record, and the same being examined, it is the opinion of the Court that there was error in that portion of the judgment of the court below in assessing Clinton Manges, Individually, delinquent property taxes in the sum of $721,325.39. It is therefore considered, adjudged and ordered that said judgment adjudging taxes against Clinton Manges in the sum of $721,325.39, which covers mineral taxes on the properties here involved, is changed so as to provide that such taxes are assessed jointly against Clinton Manges

and Duval County Ranch Company, Inc. As REFORMED, the judgment is AFFIRMED.

It is further ordered that appellants Duval County Ranch Company, Inc., and Clinton Manges and surety, American States Insurance Company pay all costs of appeal in this behalf expended and incurred, and this decision be certified below for observance.

Recorded in the Minutes of this Court in Volume 18, Page 560 July 11, 1979.

APPENDIX D

ORDERS OF THE SUPREME COURT OF TEXAS IN REVIEW OF THE JUDGMENT OF THE COURT OF CIVIL APPEALS IN THE SUPREME COURT OF TEXAS

- - - - - -

January 16, 1980

No. B-8887

DUVAL COUNTY RANCH COMPANY AND CLINTON MANGES vs. STATE OF TEXAS	))))	From Duval County, Fourth District.

Application of petitioners for writ of error to the Court of Civil Appeals for the Fourth Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicants

pay all costs incurred on this application.

- - - - - -

D-2

June 25, 1980

No. B-8887

DUVAL COUNTY RANCH COMPANY AND CLINTON MANGES vs. STATE OF TEXAS	))))	From Duval County, Fourth District.

Petitioners' motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

- - - - - -

I, GARSON R. JACKSON, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the order of the Supreme Court of Texas in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and the seal of the Supreme Court of Texas, at the City of Austin, this, the 25th day of July, 1980.

GARSON R. JACKSON, Clerk

By Richard P. Braun, Deputy.
Richard P. Braun

APPENDIX E

THE STATE STATUTES IN QUESTION

Art. 7326. [7688] Suits to foreclose tax lien

Whenever any taxes on real estate have become delinquent it shall be the duty of the county attorney upon the expiration of the thirty days notice provided for in the two preceding articles or as soon thereafter as practicable, to file suit in the name of the State of Texas in the district court of the county where such real estate is situated, for the total amount of taxes, interest, penalty and costs that have remained unpaid for all years since the thirty-first day of December, 1908, with interest computed thereon to the time fixed for the trial thereof at the rate of six per cent per annum, and shall pray for judgment for the payment of the several amounts so specified therein and shown to be due and unpaid by the delinquent tax records of said county; and also that such land be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief as the State may be entitled to under the law and facts. All suits to enforce the collection of taxes as provided in this law shall include all lands in the county where the suit is brought, owned by the same person on which delinquent taxes are due, and shall take precedence over all other suits pending in said district court. If through mistake, oversight or otherwise any tax due on any land owned by the defendant is omitted from such suit, such omission shall not be any defense against the collection of the tax due and sued for. *All delinquent tax records of said county in any county where such suit is brought shall be prima*

facie evidence of the true and correct amount of taxes and costs due by the defendant or defendants in such suit, and the same or certified copies thereof shall be admissable in the trial of such suit as evidence thereof. Such suit shall be brought as an ordinary foreclosure for debt, with averments as to the existence of a lien upon such land for such taxes, with interest at the rate of six per cent per annum, and shall pray for judgment for the foreclosure of the said lien and sale of said lands as under ordinary execution. The county attorney, or the attorney employed by the commissioners court, shall sign such petition as attorney for plaintiff. The county tax collector and county tax assessor shall furnish all affidavits, certified copies of the records of their respective offices and such other evidence as may be in their possession by virtue of such office as may be applied for by the proper attorney prosecuting such suit, and shall be allowed a fee of fifty cents for each certified copy furnished upon such application. If the amount of taxes delinquent is not more than five dollars the commissioners court may have such suit for five dollars or less instituted or not as said court may deem to be for the best interests of the county. Acts 1895 p. 50; Acts 1897 p. 132; Acts 2nd C.S. 1923 p. 34; Acts 3rd C.S. 1923 p. 184.

Art. 7336. [7692] Penalty

(a) If any person shall pay, on or before November thirtieth of the year for which their assessment is made, one-half (½) of the taxes imposed by law on him or his property, then he shall have until and including the thirtieth day of the succeeding June, within which to pay the other one-half (½) of his said taxes without penalty or interest thereon.

If said taxpayer, after paying said one-half (½) of his taxes on or before November thirtieth, as hereinbefore provided, shall fail or refuse to pay, on or before June thirtieth next succeeding said November, the other one-half (½) of his said taxes, a penalty of eight (8%) per cent of the amount of said unpaid taxes accrue thereon.

If any person fails to pay one-half (½) of the taxes, imposed by law upon him or his property, on or before the thirtieth day of November of the year for which the assessment is made, then unless he pays all of the taxes (imposed by law on him or his property), on or before the thirty-first day of the succeeding January, the following penalty shall be payable thereon, to-wit: During the month of February, one (1%) per cent; during the month of March, two (2%) per cent; during the month of April, three (3%) per cent; during the month of May, four (4%) per cent; during the month of June, five (5%) per cent; and on and after the first day of July, eight (8%) per cent.

(b) All poll taxes and all ad valorem taxes, unless one-half (½) thereof have been paid on or before November thirtieth as hereinabove provided, shall become delinquent if not paid prior to February first of the year next succeeding the year for which the return of the assessment rolls of the county are made to the Comptroller of Public Accounts. If one-half (½) of said ad valorem taxes have been paid on or before the thirtieth day of November as herein provided, the remaining one-half (½) of such taxes shall be delinquent if not paid before the first day of July of the year next succeeding the year for which the return of the assess-

ment rolls of the county are made to the Comptroller of Public Accounts.

(c) If one-half (½) of such ad valorem taxes have been paid on or before November thirtieth of the year in which the same are assessed, the discounts herein provided for shall be effective and shall apply to the last half of the ad valorem taxes if paid ninety (90), sixty (60), and thirty (30) days, respectively, prior to the first day of July, when the same became delinquent as herein provided; but such discount shall not apply to the first half of such taxes if the same have been paid on or before November thirtieth of the year in which such assessment is made.

(d) All delinquent taxes shall bear interest at the rate of six (6%) per cent per annum from the date of their delinquency. All penalties and interest provided for in this Act shall, when collected, be paid to the State, counties, and districts, if any, in proportion to the taxes upon which the penalty and interest are collected. All discounts provided for in this Act shall, when allowed, be charged to the State, counties, and districts, if any, in proportion to the taxes upon which such discounts are allowed.

(e) The Assessor and Collector of Taxes shall, as of the first day of July of each year for which any State, county and district taxes for the preceding year remain unpaid, make up a list of the lands and lots and/or property on which any taxes for such preceding year are delinquent, charging against the same all unpaid taxes assessed against the owner thereof on the rolls for said year.

Penalties, interest and costs accrued against any land, lots and/or property need not be entered by the

Assessor and Collector of Taxes on said list, but in each and every instance all such penalties, interest and costs shall be and remain a statutory charge with the same force and effect as if entered on said list, and the Assessor and Collector of Taxes shall calculate and charge all such penalties, interest and costs on all delinquent tax statements or delinquent tax receipts issued by him.

Said list shall be made in triplicate and presented to the Commissioners' Court for examination and correction, and after being so examined and corrected said list in triplicate shall be approved by said Court. One copy thereof shall be filed with the County Clerk or Auditor, one copy retained and filed by the Assessor and Collector of Taxes, and one copy forwarded to the Comptroller with the annual settlement report of the Assessor and Collector of Taxes. *Said list as complied by the Assessor and Collector of Taxes, and corrected by the Commissioners' Court, or the rolls or books on file in the office of the Assessor and Collector of Taxes, shall be prima facie evidence that all the requirements of the law have been complied with by the officers of courts charged with any duty thereunder, as to regularity of listing, assessing, and levying all taxes therein set out, and that the amount assessed against said real estate is a true and correct charge.* If the description of the real estate in said list or assessment rolls or books is not sufficient to identify the same, but there is a sufficient description of the inventories in the office of the Assessor and Collector of Taxes, then said inventories shall be admissable as evidence of the description of said property.

The Comptroller of Public Accounts shall prescribe suitable forms to be used by the Assessor and Collector

of Taxes for noting thereon the payment of taxes in semi-annual installments. He shall also prescribed suitable forms for receipts, reports and for any other purpose necessary in carrying out the provisions of this Act.

This provision is cumulative of all other provisions of the Statutes of the State prescribing the duties of the Comptroller of Public Accounts. Acts 1895, p. 50; G.L. vol. 10, p. 780; Acts 1897, p. 132; G.L. vol. 10, p. 1186; Acts 1923, 2nd C.S. p. 39; Acts 1931, 42nd Leg. p. 196, ch. 117; Acts 1934, 43rd Leg. 4th C.S. p. 36, ch. 10 § 2; Acts 1939, 46th Leg. p. 654 § 3.

APPENDIX F

SYNOPSIS OF FACTS CONCERNING LEVY SHOWN IN MINUTES OF THE VARIOUS TAXING AUTHORITIES

YEAR	DUVAL COUNTY	SCHOOL DIST.	WATER DIST.
1971	No record in minutes	Taxes paid	No record in minutes
1972	No record in minutes	Taxes paid	No record in minutes
1973	No record in minutes	No minutes	No record in minutes
1974	No record in minutes	No record in minutes	No record in minutes
1975	Special Meeting; full court not present	Levy by motion, not ordinance	.....
1976	No record in minutes	Levy by motion, not ordinance	Levy proposed, no vote taken

NO. 80-428

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CLINTON MANGES AND DUVAL COUNTY RANCH COMPANY,
Petitioners,

v.

COUNTY OF DUVAL, ET AL,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF TEXAS

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF TEXAS

STATEMENT OF THE CASE

This case can be best described as a delinquent ad valorem tax suit. A full reading of the opinion of the Texas Court of Civil Appeals (Petitioners' Appendix p. A-1) demonstrates that this case involves nothing more than the failure of the Petitioners to produce sufficient evidence to rebut a constitutionally valid rule of evidence presumption. As the lower Court of Civil Appeals noted

in its opinion: "Defensively, neither Manges nor the Ranch Company offered any testimony or explanation with respect to their non-payment of the taxes sought. We have concluded that the mere introduction of the silent minutes was not sufficient positive evidence to rebut the statutory presumptions created by Articles 7326 and 7336. Moreover, there was other evidence introduced before the Trial Court as to the regularity of the tax proceedings in question." (Petitioners' Appendix p. A-14).

REASONS FOR DENYING THE WRIT

I. The Texas statutory provisions creating a prima facie evidence presumption that all the requirements of law have been complied with as to the levying of taxes is not an unconstitutional permanent irrebutable presumption which denies due process of law.

Even though the Petitioners are not attacking the constitutionality of the Texas statutes *per se,* but rather their interpretation by the Texas Court of Civil Appeals (Petitioners' Petition p. 8, 17) it is necessary to note that the Texas statutes, Arts. 7326 & 7336, (Petitioners' Appendix p. E-1) involve legitimate and necessary presumptions of validity that can be rebutted by evidence in a trial. These statutes are not like the permanent irrebutable presumptions that have been held by this Court to violate the Due Process clauses of the Fifth and Fourteenth Amendments as in *Vlandis v. Kline,* 93 S.Ct. 2230, 412 U.S. 441, 37 L.Ed.2d 63 (1973) and *U.S. Dept. of Agriculture v. Murray,* 93 S.Ct. 2832, 413 U.S. 508 37 L.Ed.2d 767 (1973).

The Petitioners were afforded a trial where every opportunity was given to rebut the prima facie evidentiary presumptions created by the statutes. Due Process is not violated when the parties are afforded the opportunity in a full blown trial to rebut the existence of a tax levy and fail to do so because of insufficient evidence.

The Petitioners failed in their proof and now seek to make this case a controversy involving the Fifth and Fourteenth Amendment when no substantial federal question or conflict is shown.

II. The Decision of the Court of Civil Appeals For The Fourth Supreme Judicial District of Texas does not violate Due Process.

The thrust of Petitioners' claim for review, as Respondents see and understand it, is based on the exaggerated and incorrect assertion that the interpretation upon Articles 7326 and 7336 placed by the Texas Court of Civil Appeals has produced such an unfair burden of proof requirement upon them to rebut the presumption that taxes were legally levied as to constitute a denial of due process.

Any doubt as to the constitutional permissability of a presumption imposing a burden of persuasion of the nonexistence of a presumed fact in civil cases is laid to rest by *Dick v. New York Life Ins. Co.*, 359 U.S. 437, 79 S.Ct. 921, 3 L.Ed.2d 935 (1959).

As discussed in Texas Law of Evidence Civil and Criminal - Third Edition, Texas Practice, Volume 1 at page 76:

> ". . . the presumption places upon the party against whom it operates the burden of producing evidence

> sufficient to justify a finding of non-existence of the presumed fact.[49] This view has been adopted by the new Federal Rules of Evidence[50] and is the established rule in Texas.[51]"

In the instant case, simply put, the Petitioners simply failed to present sufficient evidence (i.e. failed to persuade) to the Trial Court to negate the permissible presumption created by the statutes, thus permitting the Trial Court, as the finder of fact, to find the taxes were validly levied. What Petitioners seek to do is to convert an "insufficiency of the evidence" question into a due process violation issue. Clearly, no amount of rhetoric, regardless of its effect "on large property holdings in south Texas", can or should convert this case into one warranting review by this Court. The Petitioners went to trial and were afforded adequate and full opportunity to rebut the presumption of the tax levy and they failed.

CONCLUSION

It is respectfully submitted that Petitioners have wholly failed to sustain their burden of establishing under U.S. Supreme Court Rule 17 that there are special and important reasons why the writ of certiorari should be granted. The decision below did not involve an important question of federal law which has not been, but should be, settled by this Court; nor has the Texas Court of Civil Appeals decided a federal question in a way to conflict with applicable decisions of this Court on the same matter. The Texas Court of Civil Appeals correctly held that the Trial Court correctly held that the defenses and evidence offered by the Petitioners was insufficient to prevail as against the presumptions and provisions of Articles 7326 and 7336.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

G. RUDOLPH GARZA, JR.

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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF TEXAS has been served upon Counsel for Petitioners, Mr. Mike A. Hatchell, P. O. Box 629, Tyler, Texas 75701, by placing same in the United States mail, properly addressed and postage pre-paid, on this the _____ day of December, 1980.

G. RUDOLPH GARZA, JR.